



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

February 20, 1997

The Honorable Mark H. Dettman  
Midland County Attorney  
P.O. Box 2559  
Midland, Texas 79702

Letter Opinion No. 97-011

Re: Whether the district or county attorney for Midland County must represent the county in general civil litigation and related questions (ID# 38679)

Dear Mr. Dettman:

You ask whether the district or county attorney for Midland County has a duty to represent the county in general civil litigation. In the absence of a duty, you ask whether either officer is authorized to represent the county in general civil litigation in his or her private capacity. If we conclude that either or both of the officers, acting privately, may represent the county in civil litigation, you ask whether the officer is entitled to reasonable compensation for the services performed.

We conclude that neither the district nor the county attorney for Midland County is obligated to represent the county in general civil litigation. On the other hand, we conclude that the county may contract with the county attorney, in his or her private capacity, to represent the county in civil litigation, and the county attorney may receive reasonable compensation for representing the county in general civil litigation. The county may not, however, contract with the district attorney in his or her private capacity.

A county and district attorney's primary constitutional purpose is to prosecute criminal cases.<sup>1</sup> Under article V, section 21 of the Texas Constitution, a county attorney is required to represent the State in all cases in the district court and lower courts in the county. In a county served both by a county attorney and a district attorney, the legislature is to direct the duties of the two.<sup>2</sup> The legislature may supplement the duties of a county or district attorney so long as the additional tasks are consistent with those assigned in the constitution.<sup>3</sup>

---

<sup>1</sup>See *Guynes v. Galveston County*, 861 S.W.2d 861, 864 (Tex. 1993); Attorney General Opinion O-3656 (1941) at 1 (quoting *Brady v. Brooks*, 89 S.W. 1052, 1055 (Tex. 1905)).

<sup>2</sup>Tex. Const. art. V, § 21.

<sup>3</sup>Letter Advisory No. 24 (1973) at 2.

Unless the legislature has enacted a statute requiring a county or district attorney to represent the county in civil litigation, however, the attorney is not obligated to do so.<sup>4</sup> No statute setting out the duties of district and county attorneys generally requires a district or county attorney to represent the county in general civil litigation.<sup>5</sup> Moreover, no specific statute pertaining to the county or district attorney serving Midland County requires the attorney to represent the county in general civil litigation.<sup>6</sup>

We conclude, therefore, that neither the Midland County Attorney nor the district attorney of the 142d Judicial District, which district consists of Midland County,<sup>7</sup> is required to represent the county in general civil litigation. Nevertheless, the county commissioners court may contract with an attorney to represent the county in general civil litigation,<sup>8</sup> and we are unaware of any statute that excludes the Midland County attorney from those attorneys with whom the commissioners court may contract.<sup>9</sup> Consequently, the Midland County commissioners court may contract with the county attorney to represent the county in general civil litigation. In addition, the county attorney is entitled to be compensated for representing the county in general civil litigation in accordance with the contract executed between the attorney and the county. In the event the contract fails to specify the compensation the attorney is to receive, the attorney is entitled to reasonable compensation.<sup>10</sup>

By contrast, the county may not contract with the district attorney in his or her private capacity to represent the county in general civil litigation. Government Code section 46.005(a) prohibits certain prosecutors from engaging in the private practice of

---

<sup>4</sup>See *Guynes*, 861 S.W.2d at 864; *Hill Farm, Inc. v. Hill County*, 425 S.W.2d 414, 419 (Tex. Civ. App.—Waco 1968), *aff'd*, 436 S.W.2d 320 (1969); Attorney General Opinion O-3656 (1941) at 2; Letter Advisory No. 24 (1973) at 2; *cf.* Gov't Code §§ 43.106(b), .128(c), 45.201, .340.

<sup>5</sup>See Gov't Code ch. 41; *see also Guynes*, 861 S.W.2d at 864 n.2. Government Code section 41.007 requires a county or district attorney, on request, to advise a county or precinct official relating to the official's duties.

<sup>6</sup>See Gov't Code §§ 43.157, 45.265.

<sup>7</sup>See *id.* § 43.157.

<sup>8</sup>See *Guynes*, 861 S.W.2d at 864.

<sup>9</sup>See *Hill Farm, Inc.*, 425 S.W.2d at 419; *Lattimore v. Tarrant County*, 124 S.W. 205, 206 (Tex. Civ. App. 1909, no writ); Attorney General Opinions JM-198 (1984) at 1; O-3656 (1941) at 2; Letter Advisory No. 24 (1973) at 2.

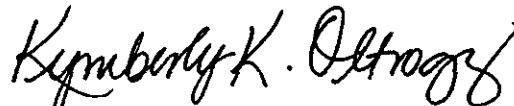
<sup>10</sup>See Attorney General Opinion O-3656 (1941) at 2-3; *see also Railey v. Davis*, 128 S.W. 434, 435 (Tex. Civ. App. 1910, writ *ref'd*); *Britt v. Burghart*, 41 S.W. 389, 391 (Tex. Civ. App. 1897, writ *ref'd*).

law. Section 46.002 includes the district attorney for the 142d Judicial District among those prosecutors to whom section 46.005 applies.<sup>11</sup>

### S U M M A R Y

Neither the Midland County Attorney nor the district attorney of the 142d Judicial District, which district consists of Midland County, is required to represent Midland County in general civil litigation. Nevertheless, the county commissioners court may contract with the county attorney, in his or her private capacity, to represent the county in general civil litigation. The county attorney is entitled to be compensated. On the other hand, the county may not contract with the district attorney to represent the county in general civil litigation in his or her private capacity.

Yours very truly,



Kymberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

---

<sup>11</sup>By contrast, Government Code chapter 46 does not apply to the Midland County Attorney. See Gov't Code § 46.002(3).